Appendix F Response to Comments

Written comments on the draft permit were received by the following individuals or organizations

1. Clinton Campbell, Kyle Murphy, and Greg Haubrich, Washington State Department of Agriculture
2. Stacey L. Stater, Monsanto Company
3. Sharon Sorby, Pend Oreille County Noxious Weed Control Board
4. Scott McKinnie, Far West Agribusiness Association
5. Patty Lynch, Washington State Department of Transportation
6. Damon Diessner, City of Bellevue
7. Wendy Sue Wheeler, Washington State Department of Agriculture
8. David E. Ortman, Wise Use Movement
9. Mr. Charles Simenstad, fisheries biologist
10. Sue Winterowd, Stevens County Noxious Weed Control Board
11. Bill Wamsley, Lewis County Noxious Weed Control Board
12. Cathy Lucero, Clallam County Noxious Weed Control Board
13. Steve McGonigal, The Washington State Noxious Weed Control Board
14. Jane Wentworth, King County Noxious Weed Control Board
15. Jennifer L. Shaw, Syngenta
16. John Carleton, Washington Department of Fish and Wildlife
17. Heather Hansen, Washington Friends of Farms and Forests
18. Fritzi Cohen, Moby Dick Hotel
19. Judy Feldman, Island County Noxious Weed Control Board
20. Todd Davis, Kittitas County Noxious Weed Control Board
21. Dave Swindale, Lake Sylvia resident
22. Terry McNabb, AquaTechnex
23. Monica Hoover, USDA – NRCS
24. Dr. Kim Patten, WSU
25. Marc Stairet, Benton County Noxious Weed Control Board

Oral testimony was received from the following individuals at the public hearings; a transcript is available from Ecology upon request.

March 11, 2002 Hearing in Yakima Washington

26. Greg Haubrich, Washington State Department of Agriculture

March 14, 2002 Hearing in Lacey Washington

27. Steve McGonigal, Washington State Noxious Weed Control Board
28. Dick Sheldon, Northern Oyster Company
29. Marshall Mooring, Mason Lake resident
30. Heather Hansen, Friends of Farms and Forests
31. Cathy Lucero, Clallam County Noxious Weed Control Board

March 25, 2002 Hearing in Spokane, Washington

32. Sharon Sorby, Pend Oreille County Noxious Weed Control Board
33. Mr. Bunch, Concerned citizen
34. Gerald Adrian, Cerexagri
35. Mary Lou Peterson, Okanogan County Noxious Weed Control Board
36. Jim Richardson, Loon Lake resident
37. Pete (last name was not audible on transcript), Farwest AgriBusiness Association

Comments

General Comments to permit

Commentors # 3, 10, 11, 12, 13, 14, 19, 20, 27, 31, 35, 36 all support having the Department of Agriculture as the permit holder.

Commentor # 8 is strongly opposed to the issuance of an NPDES general permit to allow the discharge of unlimited amounts of pollutants. He indicated that the proposed NPDES permit is inadequate and does not meet the goals or policies of the Federal Clean Water Act.

Answer: The proposed permit meets the regulations based on implementation of the Federal Clean Water Act.

Commentor # 33 had general concerns about pesticide use in general but was specifically worried about the impacts of pesticide use on bees.

Answer: All herbicides proposed for use under this permit have undergone a risk assessment by Ecology. Bees are not likely to come in contact with fluridone or endothall because these herbicides are applied directly to the water. Bees are more likely to come in contact with 2,4-D or glyphosate which are used for emergent plant control. Glyphosate is nontoxic to honeybees. Its oral and dermal LD50 is greater than 0.1 mg/ bee. The 2,4-D formulations allowed under the general permit, dimethylamine salt and butoxyethyl ester, are not toxic to bees at the concentrations used to control emergent weeds. There are 2,4-D formulations not allowed for use by this permit that are moderately toxic to honeybees. However, it is much more likely that glyphosate will be the herbicide of choice when treating emergent species.

Commentors # 32, 35, 36, and 37 asked Ecology to keep the permit simple, inexpensive, and streamlined.

Answer: Permitting requirements for marine and freshwater noxious emergent plants are very similar to that required under our former regulating program. Permits for lakes have been streamlined by Agriculture agreeing to provide umbrella coverage to applicators under their permit.

C1 – ACTIVITIES COVERED

Commentors # 17 and # 30 question why Ecology is requiring permit coverage. The understanding was that these permits are being offered to protect users from third party lawsuits.

Answer: Ecology has had oversight over aquatic herbicide application in Washington waters for many years because of the need to modify water quality standards for a short term and will continue in this role.

Commentors # 1, 3, 5,12, 13, 14, 20, 23 26, 27, 31 request clear and concise site definitions for wetlands, seasonally dry wetlands, seasonal creeks where there is no standing water, shorelines, and mean high water line to better define for applicators when and where various herbicides will be permitted.

Answer: An additional sentence has been added to C1 - Activities Covered to clarify when the permit is needed.

Permit Change: "Weed control activities with herbicides conducted on seasonally dry land surfaces where the bio-available active ingredient does not persist at time of water return are not required to be covered under this permit."

Commentor # 12 asks "Is there a buffer zone that determines how near an application may be to a stream or lake before a permit is required, and if so, what is its width?

Answer: The applicator or permittee should determine the need for or size of a buffer zone. You do not need a permit if you do not get the herbicide into the water.

Commentor # 22 wants specific categories of waterbodies exempted from the permit and suggests that exempt waters should be those waterbodies that are owned by the sponsor, don't discharge during the period where the herbicide is detectible in the water, are not waters of the US, and applications are covered by a stormwater NPDES permit.

Answer: Activities covered under this permit are for the discharge of aquatic herbicides for the control of noxious or quarantine list weeds into waterbodies that are contiguous with rivers, creeks, and lakes, or into navigable waters, or in other situations as determined by Ecology. If the waterbody you are proposing to treat meets this definition, you need permit coverage; otherwise not.

C3. HOW CAN COVERAGE BE OBTAINED?

Commentor # 16 asks if there will be some acknowledgment by the Department that the completed application has been received.

Answer: Yes

Commentors # 21 and # 22 are concerned that there is no provision for non-government agencies to obtain coverage under this permit.

Answer: The Washington State Department of Agriculture (WSDA) will obtain coverage under the Noxious Weed Permit from Ecology. WSDA has agreed to provide "umbrella" coverage to cooperators wanting to treat noxious weeds under their permit. Non-governmental agencies, local government, other state agencies, lake associations, and private individuals can obtain coverage under WSDA's permit. WSDA is developing an application form for their cooperators to use to apply for permission to use herbicides to control noxious aquatic weeds.

Commentor # 10 would like Ecology to clarify what is an "existing Aquatic Noxious Weed Control Program".

Answer: A governmental agency with an existing Aquatic Noxious Weed Control Program is an agency that has staff that are routinely engaged in control of aquatic noxious weeds. The WSDA will fill out the Notice of Intent to apply for coverage (NOI) and they are considered to have an existing program for the control of noxious weeds. Local government entities, individuals, lake associations, etc. will obtain coverage under Agriculture's permit and Agriculture will develop a separate application for their cooperators.

Commentor # 6 worries that "with the change to using the State Environmental Policy Act (SEPA) for determining the environmental impacts from aquatic pesticide application, the cost and burden of determining whether to approve the application has been shifted to local governments that do not necessarily have the expertise or funding for this process."

Commentors # 4, 14, and 31 worry that there needs to be some sort of streamlined process or emergency response flexibility to allow treatment of pioneering infestations within 2-3 weeks rather than 60 days.

Answer: The SEPA process was completed by Ecology for each of the aquatic herbicides allowed under this permit. Additional SEPA actions on other pesticides will be led by Ecology. The WSDA will be covered under the noxious weed permit (although other government entities are not excluded for applying for primary coverage). People who want to use herbicides to treat noxious weeds in an aquatic situation will then apply to WSDA to receive coverage under their permit. This should streamline the process and the permitting burden will not be on the local government.

Commentor #5 is concerned that the current permit language does not adequately address unanticipated events, like weeds spreading in new areas that have noxious characteristics or the discovery of a new treatment technology.

Answer: Any plants on the Washington State Noxious Weed List or Agriculture's quarantine list may be treated under this permit. New herbicides will have to be evaluated

by Ecology through a SEPA process before they will be allowed to be used under this permit. See Section C2. Geographic Area Covered – "The specific areas where noxious weed control activities are covered are described by each request for inclusion in WSDA coverage. Additional areas where noxious weeds are found and require control may be treated and shall be reported to Ecology". This section allows for treatment of infestations of noxious weeds discovered after the application for coverage is submitted. The public notification procedure for lakes requires notification at least ten days prior to herbicide application.

Permit Change
All the specific areas where aquatic noxious weed control activities are covered are described not in each application for coverage but in the request for inclusion under the coverage held by WSDA or another government agency.

S1 – DISCHARGE LIMITATIONS – A. WASTE DISCHARGES

Commentor #7 would like a separate paragraph for marker dyes since they do not meet the legal definition of a spray adjuvant in Washington State. She suggests that food grade dyes are appropriate marker dyes.

Permit change
Answer: The permit has been modified according to the comment.

Commentors # 4 and # 17 indicated that triclopyr and imazapyr have received EPA approval for the control of aquatic weeds and wonder how long it may take until Ecology approves these products through the SEPA process.

Answer: Triclopyr and imazapyr have not yet received approval from EPA for the control of aquatic weeds. When these products are registered for aquatic use by EPA and by the Washington State Department of Agriculture, they must go through a SEPA process (Supplemental Environmental Impact Statement including a risk assessment) before they can be allowed for use under the permit.

Commentor # 15 asks how long before diquat is through the SEPA process.

Answer: Diquat was scheduled to go through the SEPA process in 2001, but staff were diverted from this task to work on NPDES permit development. At our current staffing level, Ecology anticipates a minimum time frame of six months until diquat will be through the SEPA process.

Commentor # 17 wants to know how long it will take to complete the multi-agency SEPA process for other chemicals. Delaying the use of other products hinders weed control, increases costs and may be less environmentally sensitive.

Answer: We understand your concerns. Unfortunately Ecology had to reassign staff to permit development at the expense of updating the EIS.

Commentor # 2 would like Ecology to change glyphosate to N-(phosphonomethyl)glycine, salt to avoid inadvertently excluding a different salt.

Answer: The salt specified in the permit has been evaluated under our EIS process. The other salts have not been evaluated and will not be included in this permit at this time.

Commentor # 8 wants to know whether non-target impacts to eelgrass beds are allowed under this permit.

Permit Change

Answer: Some non-target impacts are allowed for noxious weed control efforts in this permit. To address the concern over impacts to eelgrass beds, an additional BMP has been added to S6 on Spartina treatment requirements calling for measures to avoid impacts to eelgrass. These measures are derived from the "Final EIS for Noxious Emergent Plant Control" (November 1993) mitigation measures for Spartina control in the vicinity of eelgrass beds .An exception to acceptable impacts on nontarget plants is also inserted in S1, discharge limitations.

Commentor # 8 indicated that the draft NPDES for burrowing shrimp control does not allow discharge of carbaryl to the waters of the Shoalwater Tribe. He questions why the noxious weed permit does not prohibit the discharge of glyphosate to Tribal waters.

Answer: The Shoalwater Tribe did not request that this language be added to this permit. The Tribe has never detected glyphosate on their lands due to spartina spraying.

S1 DISCHARGE LIMITATIONS – B. TEMPORARY WATER QUALITY MODIFICATIONS

Commentor # 4 was concerned that removal of vegetation would cause habitat loss.

Answer: This permit is for the removal of noxious vegetation. Noxious weeds often form dense monocultures that exclude native plant communities and may provide poor quality food and habitat. The removal of noxious vegetation should open up areas for native plant communities to re-establish.

Commentors # 15 and # 17 disagreed with the wording of the second paragraph under S1. B. The commentors pointed out that if noxious weeds are present in a location, it is not in a natural condition.

Permit Change

Answer: The permit language has been modified.

S1. DISCHARGE LIMITATIONS – C. SPECIFIC RESTRICTIONS FOR LAKES

Commentors # 4, 10, 12, 17, 22 all had concerns and want clarification about the notification requirement for irrigation and livestock watering for lake treatments.

Permit change
Answer: The permit language has been changed to reflect the stated concerns.

Commentor #2 urges Ecology to consider allowing the use of more surfactants for glyphosate in floating leaved treatment in lakes because LI-700 may not provide the best control and demonstrates only marginally more favorable toxicity ratings.

Answer: Ecology intends to evaluate surfactants under the SEPA process at some future time. When these surfactants are evaluated and approved for use, they will be allowed for use under this permit.

Commentor # 4 would like to know what requirements/restrictions will the state require for triclopyr, imazapyr, and diquat.

Permit Change
Answer: These requirements/restrictions will be developed during the SEPA process that each herbicide undergoes. The public will have an opportunity to comment at that time. A monitoring condition for lakes only was added to the permit in anticipation of these potential SEPA actions.

Commentor # 6 would like salmonid restriction periods identified by WRIA and published annually before the permit application period.

Answer: The salmonid restriction periods are determined by the Department of Fish and Wildlife. We agree that a timing chart would be useful.

Commentor # 6 questions whether Ecology should allow endothall use at all when salmonids are present since seawater challenge experiments with endothall products have shown that chinook smolts have poor survivability?

Answer: Ecology has built in some fish protections into this permit**.** Permit was changed slightly to allow WSF&W more time to respond to proposed treatments in lakes with endothall and 2,4-D.

Commentor # 4 would like a regularly updated directory of "local fish biologist contacts" for each waterbody and questions what the consequences may be if the local biologist doesn't respond to the contact.

Answer: The Washington Department of Fish and Wildlife maintains a list of biologists for each region. If the biologist is contacted and provided information about the proposed treatment and does not respond, then the treatment can take place as scheduled.

Commentor # 22 is concerned about the requirement for a Department of Fish and Wildlife biologist to sign off on each application for Aquathol K, Aquathol, and 2,4-D

use in salmonid-bearing waters. The commentor considers this permit to be a non-permit that conflicts with state law.

Commentor # 16 is pleased that Ecology includes consultation with WDFW biologists in cases potentially affecting impacts on salmonids.

Permit Change
Answer: Because many salmonids are threatened or endangered, an extra level of protection is needed to ensure that impacts to them are minimized. The Department of Fish and Wildlife is developing site-specific timing tables that may be used in lieu of consultation when the timing tables become available.

Commenter # 17 suggests that if fish biologists stop the use of endothall and 2,4-D, they must provide clear rationale and respond in adequate time for the applicator and lake district to make other plans.

Answer: Concerns by Fish and Wildlife about the use of endothall and 2,4-D should be addressed during the development of Integrated Vegetation Management Plans (S5.). In early infestation situations, it would be prudent to immediately contact the fish biologist to discuss proposed herbicide applications.

Commentor # 6 asked why there were no salmonid restriction periods for glyphosate which could be applied for purple loosestrife control in salmonid bearing waters.

Commentor # 9 suggests that the best response to protect endangered anadromous fish in northern Puget Sound is through a non-chemical, integrated program of spartina control. If chemical spraying is not curtailed, any permit issued should limit chemical application to periods with least juvenile salmon utilization of estuarine habitats, such as during or after the month of October, and after multiple spartina mowings during the summer.

Answer: Glyphosate is applied to the plants rather than directly into the water. We anticipate that under careful application, only minimal amounts of this herbicide should enter the water. Ecology's 1993 Noxious Emergent Plant Management Environmental Impact Statement reports on a seawater challenge test conducted with Roundup® (a terrestrial herbicide containing glyphosate). "Mitchell et al. examined the efforts of Roundup® exposure on the osmoregulation of coho salmon smolts. They found that yearling smolt survival after 24 hours in seawater was unaffected by exposure to Roundup® concentrations of up to 10 times those encountered in water immediately after aerial application (2.78 mg/L). Furthermore, they report no abnormal responses in smolts when a 10-day freshwater recovery period was permitted between herbicide and seawater exposures. The investigators suggest that coho smolt osmoregulation and survival would not be affected by Roundup® applied at rates specified on the product label. Based on this information, it appears likely that application of Rodeo® without a surfactant will not adversely affect smoltification, smolt survival, or completion of the freshwater to saltwater transition phase of salmonid or other anadromous fish life cycles. However, the use of Rodeo® without a surfactant would likely be considered a violation of label

requirements." The surfactant allowed for use in lake treatments where more herbicide would likely enter the water is LI-700. According to the 1993 EIS, LI-700 is practically nontoxic to both fish and aquatic invertebrates. While R-11 and X-77 (used for emergent weed control) are both more toxic than LI-700, the EIS concludes that "given the typical application rates of these surfactants (i.e., 0.12 - 0.5 gallons per 100 gallons of spray solution), it is unlikely that concentrations in the receiving water environment would exceed the acute toxicity thresholds."

Commentors #1 and # 2 are concerned that by listing Rodeo® in parentheses after glyphosate, Ecology may be giving the impression that this product is the only one allowed. There are other glyphosate products registered with the same formulation that should be allowed for use under this permit.

Permit Change
Answer: We have changed the permit to clarify this point. Herbicides with different trade names but with the same formulation as the products listed in the permit may be used interchangeably.

Commentor # 8 is concerned about the long-term harm to the environment and has interpreted this permit to mean that glyphosate may be sprayed on a continuous basis for five months a year for five years.

Answer: Glyphosate will be applied under an IPM plan. Under S6 Best Management Practices conditions for spraying are outlined. Spraying cannot occur on a continuous basis since wind speed, drying time, and retreatment conditions must be met before retreatment can occur.

S2. MONITORING REQUIREMENTS

Commentors # 3, 14, 17, 21, 27, 28, 29, and 32 are concerned that the monitoring and data storage requirements are excessive and unnecessarily increase the cost of noxious weed control.

Answer: Data storage is already required under FIFRA. We anticipate that the Department of Agriculture will take the lead in developing and overseeing monitoring programs for marine and freshwater emergent noxious weeds. Monitoring for lake noxious weed programs will occur mainly via the Aquatic Weeds Grant program. Self-monitoring continues to be an essential part of the NPDES program. The permit provides options to satisfy the monitoring requirements, allowing a range of potential monitoring costs.

Commentor # 12 requests that if the first year of monitoring does not reveal significant results for some of the monitoring intervals and distances, that Ecology place a provision in the permit that allows those monitoring intervals and distances to be dropped or reduced.

Answer: It is our intent to collect five years of data and to evaluate the data before the general permit is reissued.

Commentor # 2 believes that a monitoring program is not a necessary part of the general permit since extensive study and evaluation of environmental impacts are included in the FIFRA registration process.

Answer: The environmental impacts of the discharge of each of the permitted herbicides has not been demonstrated to the extent necessary to satisfy the requirements based on the CWA and the water quality laws and regulations of the state. Monitoring is required to determine if the discharges are in compliance with permit requirements and to provide additional data for the development of the next permit.

Commentors # 4 and # 17 question whether it is necessary to require herbicide volatility, degradation studies, pesticide persistence. This data is available from EPA.

Permit Change
Answer: The permit has been modified so that herbicide volatility and degradation studies will no longer be required. EPA approved persistence studies may be included in the monitoring report if it is explained in the monitoring plan.

Commenter # 14 points out that if monitoring requirements begin in 2003 why must reports for 2002 be submitted.

Answer: All monitoring data must be submitted to the department according to federal regulation. If no monitoring has been performed in 2002, submittal of a notification that no monitoring has been performed by the permittee should be relatively simple.

Commentors # 15 and # 34 would like to see other manufacture's analytical methods (similar to the assay done by SePRO and allowed under this permit) added to the list of approved methods.

Permit Change
Answer: The permit has been modified so that Enzyme Linked Immunosorbent Assay (ELISA) tests will be allowed in addition to the standard analytical methods.

Commentor # 4 points out that the CFR's are for priority pollutants and related chemicals. There is no mention or consideration of approved FIFRA methods in the permit.

Answer: The CFR part 136 applies to many pollutants other than priority pollutants. Ecology has modified the permit to allow ELISA testing.

Commentor # 8 finds that waiting until 2003 to impose monitoring is not acceptable.

Answer: Due to the timing of permit issuance, Ecology waived the monitoring requirements for 2002. The permit does not become effective until mid-June, leaving insufficient time to develop an annual monitoring plan. Most noxious weed control occurs during the summer months.

S3. REPORTING AND RECORD KEEPING REQUIREMENTS

Commentor # 8 finds it unacceptable for monitoring requirements to be submitted annually and requests that any monitoring reports be submitted monthly.

Answer: It takes time for laboratory analysis and compilation of field data to occur. Ecology prefers to receive an annual monitoring report compiled by the permittee into one cohesive package rather than in piecemeal fashion.

Commentors # 4 and # 17 point out that developing and implementing a records retention and retrieval system significantly increases costs and personnel time.

Answer: The record keeping requirements in the Noxious Weed Permit are no more rigorous than the requirements that were expected of applicants under Ecology's herbicide permitting program prior to 2002. The system of records retention are not dictated in the permit so the costs are totally controllable by the permittee. Retention of monitoring records are required by federal law.

Commentor # 15 would like to know who will develop containment and cleanup methods.

Answer: It is the responsibility of the discharger to develop containment and clean up methods. The Material Safety Data Sheet for each product should contain spill or leak cleanup procedures for each herbicide.

S4. Integrated Pest Management Plan

Commentor # 14 wants to know what constitutes a long term or whole lake pesticide application.

Answer: Whole lake pesticide applications occur when at least 50 percent of the lake littoral zone is treated. Long-term pesticide application occurs when pesticide application routinely occurs for 2-3 years and is anticipated to continue on this basis.

Commentor # 14 wants to know whether treating sections along the shoreline of a lake is considered under the emergents only or the lakes only section.

Permit Change

Answer: If you are treating freshwater emergents along the shoreline of a lake then you would be covered under the Noxious Freshwater Emergent Weed Control Section. This permit section was retitled to clarify this situation.

Commentor # 14 asks will regional IAVMPs be accepted for approval.

Answer: We anticipate that lake groups will be able to adopt regional plans in principle, but they will still need to perform some site-specific activities to be accepted for approval by Ecology.

Commentor # 17 and # 30 wants to know what criteria will be used by Ecology to modify or accept an integrated vegetation management plan.

Answer: Ecology has minimum standards for integrated vegetation management plans and these criteria (see Appendix C of the fact sheet) will be used by Ecology to modify site-specific lake plans. We anticipate that any modifications to IPM plans for noxious marine or freshwater emergent plants will occur in a collaborative, cooperative process between Ecology and the permit holder.

Commentor # 17 and # 30 would like to know who will approve the integrated pest management plans in Ecology and who in Ecology has the experience and background to provide guidance.

Answer: Ecology staff will review the integrated pest management plans. Staff have been reviewing lake plans for many years.

S5. COMPLIANCE SCHEDULE

Commentor # 6 is concerned that the lakes NPDES process lacks information to identify whether alternative vegetation control methods to pesticide application have been attempted unless an Integrated Vegetation Management Plan is required.

Answer: Integrated Vegetation Management Plans will be required for whole lake herbicide treatments or for repeated treatments (see Section S5 – Compliance Schedule). The planning process for lakes will be coordinated through Agriculture and Ecology.

Commentor # 10 wants to know when does the three year time period for submitting an IAVMP start.

Answer: The timing starts when the waterbody is first treated under coverage provided by the NPDES general permit.

S6. BEST MANAGEMENT PRACTICES

Commentors #1 and # 16 recommend that Ecology require the use of marker dyes for all applications, regardless of size.

Answer: Marker dyes are allowed for emergent plants use under this permit.

Commentors # 4, 15, 17, 30, and 31 object to the language in S6.8. because it implies that fish kill or adverse habitat effect is the result of herbicide application and considerable resources would be required to prove that the herbicide caused the incident.

Permit change
Answer: The wording in S6.8, now S6.7, has been slightly modified.

Commentor # 8 would like the permit to require pesticide applicators to use a Dwyer Wind Meter to measure and record wind speed continuously throughout a pesticide application.

Permit change
Answer: The language in the permit has been changed to require that wind speed be monitored and recorded periodically during herbicide applications to spartina.

Commentor # 8 has requested that the following BMP be added to the permit. "The applicator shall comply with all pesticide label instructions. When application conditions in this permit issued by the Department differ from those on pesticide labels, the more stringent of the two requirements must be complied with. However, no condition in this permit or any amended Order shall reduce the requirements or instructions on the pesticide label. All applicable federal, state, and local laws and ordinances shall be followed."

Permit change
Answer: This condition has been edited and added to the Best Management Practices

Commentor # 8 would like Ecology to list a discharge limit for glyphosate. (8)

Answer: The FIFRA label and any additional conditions specified in the permit acts as a discharge limit for glyphosate.

Commenter # 6 wants the permit to require documentation of the presence of or impairment of vertebrates and invertebrates within the application area.

Permit Change
Answer: An additional inspection requirement for lake treatments has been added to the permit to address this concern.

P1. RESIDENTIAL AND BUSINESS NOTICE PROCEDURES

Commentors # 4, 15 and 17 are concerned that excessive notification procedures create unnecessary public alarm and that these notices should be eliminated.

Permit Change
Answer: These notification procedures have been used by Ecology under the former permitting program for years. However we have reduced the notification requirements for freshwater emergent and lake treatments.

Commentor # 5 wants Ecology to clarify the 24-hour notification to Ecology requirement.

Answer: There is no 24 hour notification to Ecology required in this permit.

Commentor # 5 would like to limit notifications to those with potable water for WSDOT selective application within right-of-way or mitigation sites.

Permit Change
Answer: Ecology has removed this notification requirement for freshwater emergent plants.

Commentor # 3 indicates that the names and addresses of lake residents are not always readily available. Signage is excessive and expensive and one posting every 2,500 feet is adequate to give notice.

Answer: The signage requirements are the same as has been used for many years under Ecology's old permitting program for aquatic herbicides. We do not believe that posting every 2,500 feet is adequate.

Commentor # 21 thinks that Section P3 provides adequate notice for persons using lakes and that Section P1 is not needed.

Answer: The dual methods of notifying individuals provide an additional level of protection especially for individuals who are extremely sensitive to pesticides.

Commentor # 12 is concerned that the notification process as outlined in the draft permit does not have enough flexibility to allow immediate treatment following the discovery of new infestations of noxious weeds. There needs to be a rapid response clause otherwise, landowners may end up in violation of noxious weed control laws.

Answer: The notification requirements have been taken from the short term modifications for aquatic herbicide application that have been issued by Ecology for lake treatments for many years. These are not "new" requirements. The notification procedures allow treatment either immediately, seven days, or ten days after discovery of

new infestation depending on the weed type, location, previous notification or a notification effort immediately after discovery.

As a researcher, does commentor #21 need to send a letter to every resident along the entire bay before spraying?

Answer: You will obtain coverage under the Department of Agriculture permit. You will need to tell them where you plan to spray and what chemical you will be using. For spartina projects only, the permittee (Agriculture) will notify each resident of the proposed actions under their permit. For lakes and rivers and freshwater emergent weed control, it is the responsibility of the permittee to see that the applicator provides public notification.

Commentor # 20 and # 25 are concerned that the system for notifying adjacent landowners for emergent weed control is too complicated and will discourage weed control.

Permit Change
Answer: We have modified the residential and business notification requirements to allow more methods of notification.

Commentor # 17 points out that maintaining a record retention system for seven years is excessive and very costly.

Answer: The retention of records for seven years is already a requirement under FIFRA.

Commentor # 17 points out that limiting the notification window to only ten days has the potential to seriously hamper their ability to apply herbicides at the most appropriate time.

Answer: The notification window is from 10 to 21 days prior to treatment.

Commentor # 8 requested that the permittee be required to send a letter/flier to anyone who has asked Ecology in writing to be notified of the discharge of pollutants under this permit.

Answer: WSDA indicates that they are willing to accommodate reasonable information requests.

P2. LEGAL NOTICE PROCEDURES

Commentor # 10 suggests that if there is no legal notice requirement for freshwater emergent control then this should be stated in the permit.

Answer: There are no legal notice requirements for freshwater emergent weed control.

Commentor # 21 states that publishing a legal notice has not been required for temporary water quality modifications in the past and suggests that having this requirement is of little benefit for small lakes (i.e. under 50 acres with limited public access).

Permit Change
Answer: Legal notice requirements have been removed for lakes.

P3. POSTING PROCEDURES

Commentors # 4, 15, 17 believe that the signage requirements are excessive and cause public alarm.

Answer: The signage requirements in the Noxious Weed Permit are the same requirements used for the Short Term Orders that have been issued for weed control activities prior to the NPDES program.

Commentor # 4 points out that the signage coloration requirement potentially discriminates against the color blind segment of the population.

Answer: This is not a "new" posting requirement

Commentors # 4 and # 15 question why the signage requirements for copper are less stringent than for the other herbicides.

Answer: Copper has not been used for noxious weed control in Washington. Therefore it is not included in this permit.

Commentor # 4 asks how far out do you put the buoys delineating the treatment area and how do you determine the "corners" of the treatment area without monitoring.

Answer: The permit does an adequate job of describing the positioning of the buoys. The applicator should be aware of where in the water that he or she has applied the herbicide. Buoys will be placed as directed by the permit so that they form a minimum fifty foot buffer around the area where the herbicide was directly applied.

Commentor # 21 points out that that requirements for posting on the water appear to be excessive especially on small lakes with limited public access and suggest that an exception be made for smaller lakes where adequate notice can be posted on the shoreline and at public access points.

Answer: Posting on the water at the time of treatment is necessary so that potential lake users are aware that herbicides are present in the lake water because of current or recent treatment of the lake at that site.

G3. RIGHT OF ENTRY

Commentor # 4 was concerned that the applicator would have to pay for copies that Ecology needed.

Answer: This section allows department staff to have access and to copy (at the department's expense) any records on the applicator's premises.

G5 – REVOCATION OF COVERAGE

Commentor #4 is concerned that if a sign is removed (by vandals) then the applicator may violate the permit.

Answer: Some discretion will be used by Ecology staff when determining whether or not the permittee is responsible when permit conditions have been violated.

G12. ADDITIONAL MONITORING REQUIREMENTS

Commentor # 17 suggests that the monitoring requirements in the permit are already extreme and no further monitoring should be required.

Answer: There may be special circumstances that require additional monitoring at a specific site. For instance, using an aquatic herbicide around a rare plant may trigger more rigorous monitoring than is outlined in the permit. This provision gives Ecology the discretion to require additional monitoring through an administrative order if it is warranted.

G14 – USE OF ACCREDITED LABORATORIES

Commentors # 4, 10, and 17 question how many accredited labs for pesticide residues are there in Washington and suggest that costs associated with using such laboratories may be excessive.

Answer: Ecology has a laboratory accreditation program and using an accredited laboratory is a legal requirement.

Commentor #14 asks whether the labs performing water sampling tests be required to be certified by WA state? If so, SePRO would no longer be available.

Answer: Yes. SePRO has indicated a willingness to become accredited by Ecology.

G18. DUTY TO REAPPLY

Commentor # 21 suggests that permits should be good for a minimum of 360 days rather than 180 days.

Answer: You have misunderstood this section. The NPDES permit is issued for five years. Agriculture will have to apply to Ecology for coverage 180 days prior to the expiration date of this five year permit.

Fact Sheet

Commentor # 17 says that many of the issues pointed out by advisory group members were not taken into consideration or corrected. The Fact Sheet should be revised after public comment has been received.

Answer: All relevant issues pointed out by the advisory group were considered. The response to comments serves as a revision to the fact sheet.

Page 4 - BACKGROUND INFORMATION

Commentor # 17 says that to adequately characterize existing pesticide regulations, the FIFRA registration system should be described, including the additional environmental testing and data that is required for an aquatic registration

Page 6

Commentor # 2 requests a language change "Glyphosate is not applied directly to water for weed control, but when it does enter the water, it dissipates by two primary mechanisms: partitioning from water into sediment, and microbial degradation over time in both water and sediment. In flowing water, factors such as tributary dilution and dispersion also contribute to the dissipation of glyphosate. ------ Based on field dissipation studies, the half-life for glyphosate and AMPA in surface water ranges from a few days to 2 weeks".

Answer: The monitoring required by the general permit should lead to a better understanding of the causes of the range of time for the half-life.

Page 7

Commentor # 8 says that the Fact Sheet fails to disclose significant problems with glyphosate as set out in the 1993 Noxious Emergent Management FEIS and gives examples from the FEIS….

Answer: The referenced statements from the FEIS are merely pointing out data gaps or inconclusive studies that existed in 1993. The studies that have been done since 1993 provide information that narrows the gaps.

Page 8, final paragraph

Commentor # 16 states that there are inaccuracies in the mix of products and completion dates.

Answer: The Fact Sheet is correct except that the February 2001 date for the assessment of diquat, triclopyr, and copper compounds is inaccurate.

Page 10. Description of Aquatic Herbicide Application Techniques.

Commentor # 8 indicates that the Fact Sheet fails to describe aerial spraying. In fact the wide variety of application methods means that a general permit is inappropriate. Under 40 C.F.R. Sec. 128.22 (a)(2) (ii), general permits may only be issued if the sources within each category or subcategory all ……" Within the categories as set out by Ecology such as "Noxious emergent plant control in wetlands and shorelines" there are very different application methods …. Therefore, this category would not meet the conditions of a general permit. In addition ….a discharger may be required to apply for and obtain an individual permit when …. Regarding toxic pesticide discharges for noxious emergent plant control, there is no question that the discharges are a significant contributor of pollutants…. We are again requesting that no NPDES general permit be issued and that discharge of pollutants be evaluated as part of an individual NPDES permit application.

Answer: The correct citation is 122.28(a)(2)(ii) and the noxious weed control discharges are similar and appropriately controlled under a general permit which addresses any differences with permit conditions that are applicable to the specific herbicide application.

Page 13

Commentor # 17 notes inaccuracies on this page - the Washington Pesticide Control Act is RCW 15.58. There is no reference to IPM in the Washington Pesticide Control Act. Further, RCW 17.15 clearly states that it applies to state agencies only. Therefore, IPM plans should not be required of private applicators applying to private lakes. RCW 17.15 does not include any authorization to require APPROVAL of an IPM plan by any government agency. The fact sheet states, "IPMs require the investigation of all control options, but do not require nonchemical pest controls as the preferred option." (Note that the word "plan" has been left out of this sentence and others. The sentence is not grammatically correct without it.) Integrated pest management does not make any "requirement." It describes a decision making process. IPM is a wonderful tool that should be encouraged, but it is inappropriate and unwarranted for Ecology to require or approve such plans.

Answer: We stand corrected on the RCW. Integrated pest management is the preferred alternative identified in our 2001 Final Supplemental Environmental Impact Statement. The IPM requirements in state law pertain to state agencies and institutions and not the general public. IPM planning for the general permit is required on the basis of implementation of all known available and reasonable methods of prevention and control of pollutants.

Page 15. Water Quality Based Requirements.

Commentor # 8 points out that Rodeo® (glyphosate) is a toxic chemical, a pollutant and can impact human health……

Answer: This general permit has been developed partly because herbicides are toxic to vegetation and can be a pollutant if present in the water after the target weeds are treated.

Page 18. Table 1.

Commentor # 8 asks why does Rodeo® have no active ingredient use rate limitation.

Answer: Since glyphosate is not applied directly into water it is not appropriate to list an active ingredient concentration in treated waters.

Page 19, Table 1

Commentor # 16 asks whether Pro-Spreader Activator is one of the adjuvants listed in the draft permit, page 7, section S1, A? Perhaps the table's contents should be fully coordinated with the text in the draft permit.

Answer: Surfactants approved for use are LI-700®, R-11, X77 or other registered surfactants within the two chemical families.

Page 26

Commentor # 16 reports that hand-held wiping may have been found effective at control, but believes the technique to be impractical for implementation.

Answer: Hand-held wiping may be effective when a small number of isolated plants are present. We agree that it is not practical for large or dense plant beds.

Page 27

Commentor # 16 suggests that Ecology use the genus name, *Spartina*.

Answer: Not all spartina species are listed as noxious weeds in Washington.

Appendix B

Commentor # 8 says that on page 27, it states that a leafhopper has been suggested as a potential biocontrol agent for spartina. This leafhopper has already been released in Willapa Bay, but this fact sheet fails to state this fact or to provide any update on what effects, if any, have resulted. This lack of disclosure undermines Ecology's credibility as a protector of the environment.

Answer: Use of the leafhopper, *Prokelisia marginata*, for control of spartina is promising, and is still under investigation. It is not, at this time, feasible to rely on it as the only means to attempt control of spartina.

Formatting Comments in Permit

Commentor # 5 would like the agency director and or designee(s) included for signature authority.

Answer: The general condition already allows for delegation of signature authority.

Commentors # 1 and # 16 would like Ecology to identify XXX in P1.C1. and identify XXXXXX in P3.A.

Answer: The placeholder in P1C1 is for appendix E of the fact sheet. The placeholder in P3A was for another means of identifying public access areas. The Washington Public Shore Guide-Marine Waters is sufficient for this purpose.

Pg 17 of 29: B.

Commentor # 10 suggests that the following sentence be reworded "…shall publish …for all pesticide applications expected during the time the permit is in effect." If I understand right, the permit is in effect for 5 years. Is that really what is meant in this line or should it read "…for all pesticide applications expected during the current treatment season."

Permit change
Answer: The wording has been changed so that the permittee is to publish legal notice for the pending treatment season.

Pg 20 of 29: 2. d)
Commentor # 10 wonders why the applicator's map shall include a 400-foot buffer strip around the treatment areas when the buoy placement only requires a 50-foot butter strip around the treatment areas. Why would a map have to show a 400-foot buffer?

Answer: The pretreatment maps are less precise than the buoys that mark the area that was finally treated.

Fact Sheet

Background information

Commentor # 7 points out that the citation for FIFRA is 40 CFR 152.

Answer: That is correct.

Page 4

Commentor # 1 notes that WAC 16-752 500 through 525 refers only to the aquatic weed quarantine list. However, there are other plants quarantined in other sections of this WAC that have the potential to establish in aquatic situations. Subsections 500 through 525 should be deleted, leaving WAC 16.752.

Answer: That is correct.

Pg 8 Bottom of page

Commentor # 10 suggests a wording change: "A second set of assessments, scheduled for completion February 2001, will evaluate diquat, triclopyr and copper compounds."

Answer: Those assessments were scheduled for February, 2001, but this date was missed due to the unexpected development of aquatic pesticide permits.

Page 20 – IPM

Commentor # 1 says that this section describes herbicides as a last resort rather than actual IPM. The definition of IPM found in RCW 17.15 is mandated for state agencies. The permit text should be made consistent with this statute.

Commentor # 8 does not agree with Ecology's definition of integrated pest management and says that under a real IPM program nonchemical pest controls are the preferred option with the use of chemicals the last resort.

Answer: Ecology is using the definition of IPM in RCW 17.15. This "means a coordinated decision making and action process that uses the most appropriate pest control methods and strategy in an environmentally and economically sound manner to meet agency programmatic pest management objectives."

Page 23

Commentor #1 correctly points out that the correct P.O. Box for Ecology is P.O. Box 47600.

Page 25 – Spartina –

Commentor # 1 says that this section refers to impacts associated with *S. anglica*. This should refer to impacts associated with spartina rather than just one species. The entire section of the spartina section of the fact sheet is extremely outdated. Most of the information is taken from the 1994 EIS, and although this information is still relevant, much new information has arisen since 1994. Ecology should consider using more updated information for this section. The third paragraph of this section is somewhat confusing as to the locations of known infestations.

Answer: More current information on spartina infestations and control can be found in the report to the legislature of December 15, 2001 "Spartina Eradication and Control Program" (Washington State Department of Agriculture).

Classification of Adjuvants

Commentor # 7 notes – The statement "Buffering agents, marker dyes, and antifoam agents are perhaps the only two with aquatic plant management significance." This lists three not two. Marker dyes are misplaced here and belong in the next classification section titled "Marker Dyes."

Technology Based Water Quality Protection Requirements:

Commentor # 7 points out that the citation for the Washington Pesticide Control Act is incorrect. The Washington Pesticide Control Act is Chapter 15.58 RCW. 17.15 is titled "Integrated Pest Management…. The Washington Pesticide control Act does not endorse or mention IPM. Furthermore, the IPM legislation does not refer to the Washington Pesticide Control Act. (7) In the same paragraph, change IPMs to IPM.

Commentor # 17 wants to know under what authority are IPM plans required for aquatic herbicide use.

Commentor # 17 says that the fact sheet states: "The permittee should continue to examine the possibility of alternatives to reduce the need for aquatic pesticides." It goes on to list other restrictions for herbicide use. This section is inconsistent with IPM. The goal of the permit should not be to reduce pesticide use but to ensure that water quality is protected. The goal of IPM is not to reduce pesticide use, but to manage pests in an environmentally and economically sound manner using the best combination of tools. This section is misleading in implying that IPM is a strategy for use reduction.

Commentor # 16 interprets IPM to mean that plans should be designed to minimize cumulative impacts on non-target organisms. Sometimes that would involve use of chemicals least toxic to non-target biota. Sometimes that would involve the use of more toxic (but more effective in removing target species) chemicals, but perhaps with a single application timed appropriately. The purpose would be to avoid multiple applications of the less toxic, but less effective chemicals. The issue of timing should be emphasized in this context. Timing can also be important regarding the vulnerability of non-target organisms.

Answer: The Final Supplemental Environmental Impact Statement for Freshwater Aquatic Plant Management, 2001 recommends that IPM plans be developed as the preferred alternative. The IPM plan requirement is required on the basis of implementation of all known available and reasonable methods of prevention and control of pollutants.

Table 1 – "permitted Herbicides Used for Noxious Weed Control:"

Commentor # 7 pointed out that Pro-Spreader Activator is not registered with the WSDA. Registration is required for the distribution of products in the state of Washington.

Answer: Pro-Spreader Activator should not have been listed in the table.

Geographical Area of Coverage

Commentor # 7 would like the following statement modified "Some noxious weed control situations are low priority because of minimal environmental impact when herbicides are applied according to the FIFRA label…." This statement should include "and other state and federal laws and rules."

Answer: The statement should be " Some noxious weed control situations are low priority because of minimal environmental impact when herbicides are applied according to the FIFRA label and other state and federal laws and rules.'

Glossary:

Commentor # 10 would like "treatment area" defined.

Answer: "Treatment Area" means the actual area, terrestrial or in water, where herbicide was directly applied and intended to contain concentration of the herbicide adequate to cause the desired effect on weeds present.

Other Requests for Information

Commentor # 6 wants to know what the inspection process and frequency is for these permits?

Answer: These permits will be issued for five years. Inspections will likely be complaint-driven and as resources allow. Agriculture plans to conduct some inspections each year for the cooperators operating under their permit.

Commentor #4 would like to know how Ecology will regulate and enforce violations.

Answer: Ecology will regulate this NPDES permit just as we regulate and enforce other NPDES general permit dischargers.